

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Gas Company (U 904 G) Regarding Year Nine (2002-2003) of Its Gas Cost Incentive Mechanism.

Application 03-06-021  
(Filed June 16, 2003)

**SCOPING MEMO AND RULING OF THE ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE REGARDING YEAR NINE OF  
THE GAS COST INCENTIVE MECHANISM**

**Summary**

Southern California Gas Company (SoCalGas) filed its Year Nine Gas Cost Incentive Mechanism (GCIM) application on June 16, 2003. A response to the application was filed by the Office of Ratepayer Advocates (ORA) on July 17, 2003, and a protest to the application was filed by Southern California Edison Company (SCE) on July 21, 2003. SoCalGas filed a reply to SCE's protest on July 1, 2003.

A prehearing conference was held on December 12, 2003, to discuss whether the issues raised by the parties required any evidentiary hearings, and to determine the procedural manner in which to process SoCalGas' application.

This scoping memo identifies the issues in this proceeding, and determines that no hearings are needed unless the decision in Investigation (I.) 02-11-040 decides that the GCIM should be modified or eliminated on a retroactive basis. A draft decision regarding SoCalGas' request for its Year 9 GCIM award shall be prepared for the Commission's action.

## **Background**

SCE's protest to SoCalGas' application asserts that the GCIM that SoCalGas operates under "creates perverse incentives, harms noncore customers, and has a detrimental impact on the California energy markets." (SCE Protest, p. 2.) SCE also contends that the ongoing Commission investigation (I.02-11-040) into the cause of the natural gas border price spikes from March 2000 through May 2001 may result in the Commission "revisiting the results of Years 7 and 8 and in the modification of the GCIM structure." SCE Prehearing Conference Statement, p. 1.) If the GCIM is modified or eliminated, SCE asserts that this will have a direct bearing on whether SoCalGas' award for Year 9 is appropriate.

SCE takes the position that the Commission should defer issuing a final decision on SoCalGas' Year 9 GCIM until the investigation concludes. If the Commission decides to proceed with the issuance of a decision on the Year 9 GCIM, SCE asserts that "the Commission should treat SoCalGas' Year Nine GCIM similarly to Years Seven and Eight, namely, the Commission should make clear that (1) any finding of reasonable management shall not prejudice what the Commission may find or conclude in I.02-11-040, and (2) any award issued for Year Nine shall be made subject to refund or adjustment as may be determined by the Commission based on the investigation." (SCE Prehearing Conference Statement, p. 1.)

I.02-11-040, which was adopted on November 21, 2002, opened an investigation into the following issues, among others:

"2. Did any of the utilities' affiliates or parent companies play a role in causing the increase in border prices? Did concerns about affiliates or parents' financial position cause utilities to take actions that may have increased gas costs?

"...

“4. Did the utilities’ gas cost incentive mechanisms create perverse incentives to increase or otherwise manipulate natural gas prices at the California border? We shall examine whether SoCalGas’ Year 7 and Year 8 operations under the GCIM, enabled them to exercise market power and/or anticompetitive behavior. If so, should these incentive mechanisms be modified or eliminated to prevent such activity?” (I.02-11-040, p. 9.)

At the December 12, 2003 prehearing conference, the assigned Administrative Law Judge (ALJ) stated that if the Commission decides that the GCIM should be modified or eliminated in I.02-11-040, that could affect the Year 9 GCIM activities of SoCalGas if it is applied retroactively to the Year 9 activities of SoCalGas.

The ALJ described two ways in which the Commission could proceed with this proceeding. The first way is to hold off on processing SoCalGas’ Year 9 GCIM application until the Commission issues a decision in the investigation. At that point, if the Commission finds in favor of SoCalGas, then no hearings would be needed and a draft decision could then be drafted on whether SoCalGas should be awarded the Year 9 GCIM amount. If the Commission finds against SoCalGas, then a prehearing conference should be held after such a decision is issued to decide how to proceed.

The second way is to draft a decision for the Commission on whether SoCalGas should be awarded the Year 9 GCIM amount. Such a decision could be made subject to the results of I.02-11-040, or not.

### **Scope of Issues**

Two issues were identified at the prehearing conference. The first issue is whether SoCalGas should be awarded the \$6.3 million it is requesting in its

Year 9 GCIM application.<sup>1</sup> The second issue is whether the GCIM created perverse incentives for SoCalGas and San Diego Gas & Electric Company to manipulate gas prices, and if so, whether the GCIM should be modified or eliminated.

SCE's contention that the GCIM created perverse incentives is being litigated in I.02-11-040. If the Commission determines in that investigation that the GCIM should be modified or eliminated on a retroactive basis, that may affect the Year 9 GCIM amount that SoCalGas is requesting in this application, and a hearing may be needed to examine the effect on the Year 9 GCIM amount.

SCE raised the same contention in SoCalGas' Year 7 and Year 8 GCIM applications, A.01-06-027 and A.02-06-035, about SoCalGas' GCIM. In D.03-08-065 and D.03-08-064, the Commission found that SoCalGas reasonably managed its gas acquisitions and operations for Year 7 and Year 8, respectively, within the context of the GCIM that existed at the time. The Commission concluded in those two decisions that SoCalGas should be awarded the shareholder awards that it was seeking, subject to refund or adjustment as may be determined in I.02-11-040.

No hearings are needed in this proceeding at this point in time because no one contests SoCalGas' calculation of the GCIM award or its operations under the GCIM that existed at the time. Depending on the outcome in I.02-11-040, a hearing may be needed in this proceeding in the future if the Commission

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<sup>1</sup> SoCalGas reports in Attachment A of its application that its average cost of gas was \$3.55 per MMBtu, or \$0.10 per MMBtu below the benchmark price of \$3.65 per MMBtu. Total shared savings were \$39 million, of which \$32.686 million is the ratepayers' share, and \$6.319 million is the shareholders' share.

decides in I.02-11-040 that the GCIM should be modified or eliminated on a retroactive basis. No one raised any other issues in this proceeding which require a hearing. Accordingly, no evidentiary hearings are needed in this GCIM application unless a decision in I.02-11-040 determines that the GCIM that SoCalGas was operating under in Year 9 should be modified or eliminated.

The preferred course of action is to proceed with issuance of a draft decision on SoCalGas' Year 9 GCIM application, and make any award that may be granted in such a decision subject to refund or adjustment as may be determined in I.02-11-040. The same course of action was taken with respect to SoCalGas' Year 7 and Year 8 applications, and the same procedural course of action should be followed here.

This application was preliminarily categorized as ratesetting in Resolution ALJ 176-3116 on July 10, 2003. Today's ruling confirms that categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after the date of this ruling. (See Rule 6.4.) As a ratesetting proceeding, the ex parte rules contained in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this proceeding.

The principal hearing officer for this proceeding shall be ALJ Wong.

It is expected that this proceeding will be completed within 18 months from the filing of SoCalGas' application.

### **Schedule**

The following is the schedule that will be followed in this proceeding.

Draft decision issued	February 13, 2004
Comments and reply comments on draft decision	In accordance with Rule 77.7
Decision adopted by the Commission	On or about March 17, 2004

**IT IS RULED** that:

1. Administrative Law Judge John S. Wong is designated the principal hearing officer for this proceeding.
2. The scope of issues, and how the issues will be resolved, are explained in the body of this ruling.
3. The schedule for this proceeding will follow the schedule set forth in this ruling.

Dated January 15, 2004, at San Francisco, California.

/s/ SUSAN P. KENNEDY

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Susan P. Kennedy  
Assigned Commissioner

/s/ JOHN S. WONG

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John S. Wong  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Regarding Year Nine of the Gas Cost Incentive Mechanism on all parties of record in this proceeding or their attorneys of record.

Dated January 15, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.